

Attorney Docket No. 24935D

REMARKS

This amendment is submitted in response to the outstanding Office Action dated January 3, 2006, and in view of the Examiner's remarks in the Advisory Action mailed July 15, 2005. Favorable reconsideration of the application, and a Notice of Allowance, are respectfully requested.

Pending Claims

The pending claims in the application are claims 19, 22 and 39 - 42. Applicants believe that the Office Action is incorrect in stating that only claims 19 and 22 are pending. Claims 39 and 40 are pending but were withdrawn from consideration as being directed to a non-elected invention in the Office Action dated May 9, 2005. Claims 41 and 42 were added in the Amendment filed July 5, 2005. The Advisory Action dated July 15, 2005 states that the amendments of the July 5 amendment were entered. Claim 41 is similar to claim 19 except that the language has been modified to more directly describe the elongation and the load-elongation properties of the mat in relation to a load applied to the paved surface, as suggested by the Examiner at page 6 of the Office Action dated May 9, 2005.

Reconsideration of Claim Withdrawal

Claims 39 and 40 were withdrawn from consideration because claim 39 recites shrinkage resistance properties of the mat in combination with the elongation and load-elongation properties recited in claim 19. In the Amendment filed July 5, 2005, Applicants made the following argument which was not addressed in the Advisory Action or the outstanding Office Action. Applicants respectfully submit that the withdrawal of these claims is unreasonable. Claim 39 is simply a combination of claim 19 and dependent claim 21 which recited the shrinkage resistance properties. The original restriction requirement dated July 14, 2004 restricted the original claims into seven groups. Applicants elected group VI, claims 19-22, characterized by the Examiner as being drawn to a method of improving a paved surface comprising the steps of applying a layer of liquefied asphalt, and applying a mat over the liquefied asphalt, classified in class 404, subclass 75. Thus, dependent claim 21 was in the

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same elected group as independent claim 19. Claim 39 simply combines the two claims 19 and 21 from the same elected group. Applicants respectfully submit that it would be unreasonable at this point in the prosecution to reverse the original decision that dependent claim 21 is in the same group as independent claim 19, in order to require the restriction of claim 21 (which is now claim 39) from claim 19. Therefore, Applicants respectfully request reconsideration of the withdrawal of claims 39 and 40. For the same reason Applicants submit that claim 42, which includes the shrinkage resistance properties, should be considered and not withdrawn.

Prior Art Rejection

Claims 19 and 22 were rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,362,780 to Marzocchi et al.

The Claimed Elongation Properties Deserve Patentable Weight.

In the Amendment filed July 5, 2005, Applicants argued patentability based on elongation properties of the mat recited in the claims; specifically, that the mat has a minimum ultimate elongation of at least 5% and a load-elongation behavior such that when the mat is subject to tensile stress, the mat achieves at least 90% of its ultimate load at an elongation not greater than 5% of the specimen length in the direction of applied stress. In the Advisory Action dated July 15, 2005, the Examiner stated that the arguments based on this claim language were not persuasive because they were based on the assumption that the language structurally defines the claimed invention. The Examiner asserted that this claim language is directed to a response of the device when subjected to an applied force, which does not structurally define the claimed invention, and hence is seen only to require an ability to respond to an applied force in the designated manner.

Applicants respectfully submit that the elongation properties of the mat recited in the claims deserve patentable weight. The ultimate elongation and the load-elongation are physical properties of the mat that are important for the proper functioning of the mat in the claimed method. Without these physical properties, the mat would not be as effective in improving the paved surface. The claim language has

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been amended slightly to more clearly indicate that the load-elongation is a physical property of the mat. As shown in the table at page 14 of the specification, the ultimate elongation is a well-known physical property that can be measured according to the standard test method ASTM D 5035-90. A method for measuring the load-elongation property is described in the specification at page 9, lines 4-10. A person of ordinary skill in the art can understand the load-elongation measurement from this description. The "jaws" refers to the jaws of the well-known Instron tensile stress testing machine. As indicated in parentheses, the ultimate load is the load at which the mat breaks.

Marzocchi et al. Neither Teaches Nor Suggests the Elongation Properties.

Marzocchi et al. neither teaches nor suggests the elongation properties of the mat recited in the claims. The Marzocchi et al. mat is described as being "board-like" and "rigid" or "semi-rigid". The mat has a thickness between one-eighth inch and five inches. During manufacture of the mat, the mat is asphalt-impregnated, and the asphalt is set or congealed so that the product has a desired thickness and density. These descriptions of the mat suggest that the mat is rigid or semi-rigid and cannot be elongated to any substantial degree. Consequently, the mat would not have a minimum ultimate elongation of at least 5% as recited in the claims. There is nothing in the Marzocchi et al. patent to suggest using a mat that is stretchable such that it has a minimum ultimate elongation of at least 5%, and that has a load-elongation property such that the mat achieves at least 90% of its ultimate load at an elongation not greater than 5% of the mat length in the direction of applied tensile stress. Therefore, it is respectfully submitted that the claims are novel and nonobvious over Marzocchi et al.

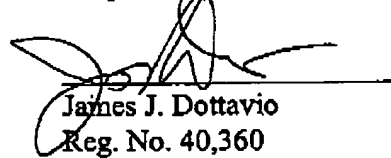
Moreover, the claims also differ from Marzocchi et al. in reciting that the liquefied asphalt on the surface penetrates and soaks the mat after the mat is applied over the liquefied asphalt. As discussed above, the Marzocchi et al. mat is pre-impregnated with asphalt during its manufacture, and the asphalt is set or congealed. Consequently, when the Marzocchi et al. mat is applied over liquefied asphalt on a surface, the liquefied asphalt does not penetrate and soak the mat. The liquefied asphalt is not drawn into the mat because the mat has been previously impregnated with asphalt and the asphalt has been set or congealed. The asphalt already

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impregnating the mat acts as a barrier that resists penetration of the mat by the liquefied asphalt on the surface.

In view of the above remarks, Applicants have shown that the claims are in proper form for allowance, and the invention, as defined in the claims, is neither disclosed nor suggested by the prior art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection and allowance of all claims.

Respectfully submitted,



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